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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

KRISTIN BLAKE, Plaintiff and Appellant, v. TIMOTHY PARKER et al., Defendants and Respondents.	B202363 (Los Angeles County Super. Ct. No. SC069583)

APPEAL from a judgment of the Superior Court of Los Angeles County. Craig D. Karlan, Judge. Affirmed in part, reversed in part, and remanded.

Benedon & Serlin, Gerald M. Serlin, Sandra J. Smith and Shona L. Armstrong for Plaintiff and Appellant.

Law Offices of Robert Bruce Parsons and Robert B. Parsons for Defendants and Respondents.

This case presents a long-standing property dispute among neighbors in the Malibu mountains. Appellant Kristin Blake claims rights to easements running through respondents Timothy and Kerry Parkers' property, which abuts Blake's property to the south. Although the trial court ruled that Blake possesses various easements over the Parkers' land, Blake challenges other aspects of the trial court's ruling. Blake contends the trial court (i) misstated the width of what is referred to as the Wallner easement, (ii) improperly allowed the Parkers to maintain various obstructions on the easements, (iii) incorrectly allowed the Parkers to install electronic gates across the Wallner easement, and (iv) erred in not awarding general damages.

As discussed below, we conclude the trial court's description of the width of the Wallner easement is incorrect. We also conclude the trial court erred in permitting the Parkers to maintain certain obstructions on the easements and in permitting the Parkers to install electronic gates with specific conditions. We conclude, however, that Blake has waived the right to object to the trial court's denial of general damages. Accordingly, we affirm in part, reverse in part and remand with directions.

Background

In 1943, Anna Hilda Wallner executed a grant deed transferring three parcels of land in the Malibu mountains to Grace Pearl Jennings for $10 (the "Wallner deed"). In 1984, Blake bought the property described in the Wallner deed, and has lived there ever since.

The Wallner deed describes the main plot of land as "PARCEL 1: The West half of the Northwest quarter of the Northeast quarter of the Northeast quarter of Section 20, Township 1 South, Range 18 West, S.B.M." The other two parcels are easements, only one of which is relevant here. The relevant easement is a roadway described as: "PARCEL 2: An easement for roadway purposes, 20 feet wide, commencing at bottom of first draw or ravine on existing private road, running North through the Northeast quarter of the Northeast quarter of said Section 20; said easement to run in a Northwesterly direction to the West half of the Northwest quarter of the Northeast quarter

of the Northeast quarter of said Section 20; the grade on said easement shall not exceed ten per cent." We refer to this easement as the "Wallner easement." The Wallner easement crosses over neighboring properties, including the property to the south of Blake's property, which the Parkers now own.

At the west end of the border between Blake's and the Parkers' property, there is also a small easement, which has become known as the "flare easement." The flare easement begins approximately where the Wallner easement comes up to meet Blake's property and a roadway flares out onto Blake's property. Blake uses the flare easement to cross from the Wallner easement onto her property.

Blake used the Wallner and flare easements freely for years to access her property. Blake testified that she met Mr. Parker for the first time in 1999. She was driving along the Wallner easement when she encountered Mr. Parker, who was in the process of buying the property to the south of Blake's property. Blake stopped, they introduced themselves and Blake told Mr. Parker about the easement running over the property. Mr. Parker asked to see a copy of the deed granting the easement. Blake made a copy of the Wallner deed and gave it to him. The Parkers acquiesced in Blake's use of the Wallner and flare easements for over a year.

Blake testified, however, that, in June 2001, Mr. Parker told her he was going to "cut off" the easement. From that point forward, the neighbors became increasingly hostile toward each other. The Parkers erected multiple obstructions to the easements, including a well, fences and gates. At trial, the Parkers' counsel agreed that "[t]here is no question at some point Mr. Parker built his home and denied and deprived others to have access across his property."

Eventually, Blake sued the Parkers. The Parkers cross-complained against the previous owners of their property and their real estate brokers. The parties' claims were tried to the court. After more than three years, the trial court issued a statement of decision, followed by an addendum to its statement of decision, and finally the judgment.

The relevant portions of the trial court's findings of fact and conclusions of law are as follows. The Wallner deed conveyed the Wallner easement to Blake. The trial

court described the width of the Wallner easement as not to exceed twenty feet, "not more than twenty feet," and as a "no greater than twenty-foot strip of land." The court also stated the Wallner easement had a "variable width" and that the "maximum width is 20 feet." The court concluded that Blake obtained the flare easement by prescription. The court also concluded that the Wallner and flare easements are appurtenant easements benefitting Blake's property.

The court found that the Parkers had "demonstrated their open intent" to block and impede Blake's use of the easements by erecting and placing various obstacles on the easements, including a well house, white picket fence, trash bins and large storage containers. The trial court permanently enjoined the Parkers from further interfering, obstructing, limiting, or preventing the use and enjoyment of the easements. Despite the permanent injunction, however, the trial court ruled that the Parkers could keep the well house, white picket fence (with a slight modification to its location), and trash dumpster, all of which were at least partially on either the Wallner easement, the flare easement or both. The court held that those obstructions do not interfere with or otherwise impede Blake's use of the easements. In an attempt to alleviate the fact that those obstructions could remain in the flare area, the trial court granted Blake a new prescriptive easement in the same general area for access to and from her property.

The trial court also ruled that the Parkers could install two electronic gates on the Wallner easement, provided the gates met very specific conditions. The trial court held that the Wallner deed did not prohibit gates, which the court found would provide a safer environment for the Parkers' children.

The trial court awarded damages to Blake in the amount of $27,681.33, which represented the trial court's calculation of damages for gas, mileage, lost time, and the cost of redoing obsolete permits and studies. The trial court refused to award general damages, stating that it was within the court's discretion to award such damages and that it declined to do so in this case.

Blake appealed from the judgment. Blake's challenges on appeal are discussed below.

Discussion

1. Width of the Wallner easement

When there is no conflicting extrinsic evidence, the interpretation of a grant deed is a question of law. (*Machado v. Southern Pacific Transportation Co.* (1991) 233 Cal.App.3d 347, 352.) The language of a grant of an easement determines the scope of the easement. (*Van Klompenburg v. Berghold* (2005) 126 Cal.App.4th 345, 349.)

Blake argues that the trial court erred in declaring the Wallner easement had a variable width of no more than 20 feet. We agree. By its clear terms, the Wallner deed grants an easement that is 20 feet wide. As the trial court found, the Wallner easement is an appurtenant easement benefiting Blake's property. As such, the width of the Wallner easement is not a prescriptive easement determined by historical use. We assume without deciding that the precise *location* of the Wallner easement may be considered "floating" or variable since the Wallner deed did not give the easement a precise location other than by reference to landmarks that may change over time. It is clear, however, that the prescribed *width* of the Wallner easement is not variable.

Because the Wallner deed specified the easement's width, Blake is entitled to the use of that specified width. "Where the way over the surface of the ground is one of expressly defined width, it is held that the owner of the easement has the right, free of interference by the owner of the servient estate, to use the land to the limits of the defined width even if the result is to give him a wider way than necessary. *Ballard v. Titus*, 157 Cal. 673, 681." (*Tarr v. Watkins* (1960) 180 Cal.App.2d 362, 366.) There is no indication that the parties agreed to a modification of the Wallner easement width. (See *id.* at p. 365.)

The Parkers argue the trial court did not err in conforming the Wallner easement width to historical usage. We disagree. This Court has held that "an easement created by grant is not lost by mere nonuser." (*Tarr v. Watkins, supra*, 180 Cal.App.2d at p. 364.) The Parkers' cases do not convince us otherwise. (See, e.g., *Colvin v. Southern California Edison Co.* (1987) 194 Cal.App.3d 1306, disapproved on other grounds in

Ornelas v. Randolph (1993) 4 Cal.4th 1095; *Colegrove Water Co. v. City of Hollywood* (1907) 151 Cal. 425.) Similarly, section 806 of the Civil Code does not support the Parkers' position. Under that section, "[t]he extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired." (Civ. Code, § 806.) Because the Wallner easement was acquired by the Wallner deed, the first half of that section—and not the latter half—applies here. Indeed, as Blake points out, were we to permit the trial court to modify the Wallner easement, Blake would lose valuable property rights to which she is entitled. (*Ballard v. Titus* (1910) 157 Cal. 673, 685; *Danielson v. Sykes* (1910) 157 Cal. 686, 691-692.)

2. Fence, well and other obstructions

Blake argues the trial court erred in not requiring the Parkers to remove various items that detract from the width of the Wallner easement and, in some cases, impede Blake's use of the easements.

The trial court found that the Parkers "demonstrated their open intent of blocking and impeding the use of the easement by BLAKE [and others] by the imposition of locked gates and various other obstructions including a well house, white picket fence, trash bins, trash containers, automobiles, trucks, storage containers, garden sheds, trailers, benches, plants, trees, and other such obstructions." In its addendum to its statement of decision, however, the trial court also found that the well house, white picket fence and trash dumpster "do not interfere with or otherwise impede the use of any of the easements at issue." Blake counters that the well severely impedes her use of the easements because the well makes it impossible for her to move her horse trailer from her property. She testified to this at trial and Mr. Parker testified he was aware of her claim. The Parkers do not address this point on appeal.

It is unclear whether the obstructions (such as the white fence, well and others) are on the Wallner easement, the prescriptive flare easement, or both. To the extent the Parkers have placed obstructions that intrude on the Wallner easement, those obstructions cannot remain. As discussed above, Blake is entitled to the full use of the width of the Wallner easement. Neither the Parkers nor the trial court cites authority for the

proposition that the Parkers can obstruct the Wallner easement even if such obstructions allegedly do not interfere with Blake's use of that easement. Thus, to the extent the trial court did not require the Parkers to remove the obstructions they imposed on the Wallner easement—whether or not they impede Blake's use of that easement—we conclude the trial court erred.

Similarly, we conclude the trial court erred to the extent it did not require the Parkers to remove obstructions from the smaller flare easement that impede Blake's use of that easement. As noted above, the trial court found that Blake acquired the flare easement by prescription. Neither party challenges that conclusion. It is within the trial court's discretion whether to require removal of an obstruction to a prescriptive easement. (*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 572.) In certain circumstances—such as when the encroaching structure was willfully erected with knowledge of the easement—a trial court may order removal of an obstruction even if the cost to do so is great. (*Ibid.*) The trial court here found that the Parkers erected certain obstructions, including the white fence and the well, not only with knowledge of the easements but with the intent to block and impede Blake's use of the easements. The Parkers do not challenge that finding. In fact, at trial, the Parkers' counsel was "happy to stipulate that there came a time where Mr. Parker took steps to block access, ingress and egress, and the only question that the court is going to determine is whether it was appropriate or not. There is no question at some point Mr. Parker built his home and denied and deprived others to have access across his property."

Although the trial court found that the well house, white picket fence and trash dumpster did not interfere with Blake's use of the easement, the record indicates the opposite. As noted above, Blake testified that the well made it impossible for her to remove her horse trailer from her property. The trial court does not mention or otherwise acknowledge this testimony in either its statement of decision or judgment. And the Parkers do not address that point on appeal. The only evidence the trial court and the Parkers mention as support for allowing the Parkers to keep certain obstructions is testimony of a neighbor, Kal Klatte. Mr. Klatte testified that, in 1976, large wooden

utility poles were installed on what is now the Parkers' property. However, simply because there are poles in one area of the easement does not necessarily mean the Parkers are entitled to obstruct other areas of the easement.

Thus, both because the well and, by extension, the white fence impede Blake's use of the easement and because the Parkers did not act innocently in erecting those obstructions, we conclude the trial court abused its discretion in not requiring the Parkers to remove those obstructions and any others that block Blake's use of the easements. (*Warsaw v. Chicago Metallic Ceilings, Inc.*, *supra*, 35 Cal.3d at pp. 572-573.)

Although, in an attempt to alleviate its ruling allowing obstructions on the easements, the trial court granted Blake a new prescriptive easement, ~(CT 218)~ we conclude that newly created easement is insufficient. The obstructions remain and, therefore, as discussed above, Blake's use of the easements remains impeded. In light of our conclusion that the Parkers' obstructions to the flare easement may not remain, the trial court's new prescriptive easement is unnecessary.

3. Gates

Blake also argues the trial court erred in permitting the Parkers to maintain electronic gates on the Wallner easement. Blake argues the trial court should have prohibited gates because (a) there was no showing that gates are necessary and (b) the gates create a safety hazard in that emergency vehicles will not have immediate and unrestricted access to the Wallner easement.

It is undisputed that the Wallner deed does not include an express prohibition against gates. Nonetheless, as Blake points out, the Parkers may not erect gates across the easements unless the gates are necessary for the use of the servient estate and do not unreasonably interfere with Blake's right of passage. (*Van Klompenburg v. Berghold*, *supra*, 126 Cal.App.4th at p. 350, fn. 5.) The Parkers do not dispute that this is the proper standard for analyzing the propriety of the gates.

We conclude substantial evidence does not support a finding that gates are necessary for the use of the servient estate. Although the Parkers argue and the trial court indicated that the gates would provide a safer environment for the Parkers' children, the

Parkers do not argue that the gates are needed to create a safer environment. As Blake indicates in her opening brief on appeal, there are many ways—short of erecting gates across the easement—to provide a safer environment for the Parkers' children. Accordingly, the trial court erred when it permitted the Parkers to install gates across the Wallner easement.

4. General damages

Blake argues that the trial court abused its discretion in refusing to award general damages. Blake claims the statement of decision recites no facts supporting such a denial. The record does not indicate (and Blake does not claim), however, that she made such an objection below.

The trial court understood its ability to award general damages. In its statement of decision, the trial court acknowledged that (i) the Parkers had impeded and blocked Blake from using the easements for five and a half years and (ii) there is legal authority to award general damages in such circumstances. Yet, the court stated it "exercise[d] its discretion by not awarding any general damages." Three principles of appellate review guide us here: (i) we presume the judgment is correct, (ii) all intendments and presumptions are indulged in favor of correctness, and (iii) the appellant must provide an adequate record affirmatively proving error. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58.)

To the extent Blake believed the statement of decision was ambiguous or inadequate, she was required to raise such objections below. "[I]f a party fails to bring omissions or ambiguities in the statement of decision's factual findings to the trial court's attention, then 'that party waives the right to claim on appeal that the statement was deficient in these regards,' and the appellate court will infer the trial court made implied factual findings to support the judgment." (*Fladeboe v. American Isuzu Motors Inc., supra*, 150 Cal.App.4th at p. 59. Cf. Code Civ. Proc., § 634 ["When a statement of decision does not resolve a controverted issue, or if the statement is ambiguous and the record shows that the omission or ambiguity was brought to the attention of the trial court [ ] prior to entry of judgment . . . , it shall not be inferred on appeal . . . that the trial court

decided in favor of the prevailing party as to those facts or on that issue."].) Thus, because Blake failed to object below to the trial court's denial of general damages, we conclude she has waived that issue on appeal.

Disposition

The judgment is reversed in part and remanded to the trial court with instructions to modify the judgment consistent with this decision. The judgment is affirmed in all other respects. Blake to recover her costs on appeal.

NOT TO BE PUBLISHED.

FERNS, J.*

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.